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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. SHARON L. DAVIS, Defendant and Appellant.	B286377 (Los Angeles County Super. Ct. No. BA451029)

APPEAL from a judgment of the Superior Court of Los Angeles County. Terry A. Bork, Judge. Affirmed in part, reversed in part and remanded.

John Derrick, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Stephanie M. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

In this insurance fraud case, Sharon Davis was injured by a door at her place of employment, the U.S. Department of Veterans Affairs, VA Medical Center in Long Beach. She submitted three claim forms under a private accident insurance policy she had obtained from Colonial Life and Accident Insurance Company and was paid about $2,700. She was eventually charged with four counts of insurance fraud, one count of forgery, and one count of grand theft for: (1) falsely claiming that she sustained the injury while "off-job" as defined in the insurance policy; (2) falsely claiming she had not applied for workers' compensation benefits; and (3) forging a signature in the employer verification portion of two claim forms. Following trial, a jury convicted her on all but the forgery count, on which it deadlocked and the court declared a mistrial.

On appeal, Davis contends insufficient evidence supported her convictions. For the insurance fraud count based on her false representation that she had not applied for workers' compensation, we agree. She applied for a federal benefit called "continuation of pay," which is a legally distinct benefit from workers' compensation under federal law. The People offered no evidence that Davis or Colonial understood the term "workers' compensation" to mean anything different from its definition under federal law, so insufficient evidence supported her conviction on this count.

As to the rest of the counts, we find sufficient evidence supported the jury's verdict. We also reject Davis's claims of instructional error and ineffective assistance of counsel. We therefore reverse one count of insurance fraud and remand for resentencing. In all other respects, we affirm.

BACKGROUND

1. Factual Background

Davis's regular work hours at the VA Medical Center were 7:30 a.m. to 4:00 p.m. On August 31, 2015, at 8:30 a.m., she was injured when a door she was entering hit her in the shin. The door separated a public hallway from her work area and was located on the second floor, about 50 yards from the front door to the building, 100 feet from the stairs and elevator, and about 25 feet from her work area. On the day of the injury, Davis was paid for a full day of work but was on a paid authorized absence from 7:30 a.m. to 8:30 a.m.

Davis met with Worker's Compensation Program Manager Teri Wheeler on September 3, 2015. Wheeler handled all of the VA Medical Center's workers' compensation cases and helped Davis complete a form called a "Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation." Directly to the right of the title is written: "U.S. Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs." Davis provided her personal information and the cause of her injury. She signed a certification stating: "I certify, under penalty of law, that the injury described above was sustained in performance of duty as an employee of the United States Government, and that it was not caused by my willful misconduct, intent to injure myself or another person, nor by my intoxication. I hereby claim medical treatment, if needed, and the following, as checked below, while disabled for work: [¶] [box checked] a. Continuation of regular pay (COP) not to exceed 45 days and compensation for wage loss if disability for work continues beyond 45 days. If my claim is denied, I understand

that the continuation of my regular pay shall be charged to sick or annual leave, or be deemed an overpayment within the meaning of 5 USC 5584."

Wheeler testified the form is for a one-time workplace injury to obtain a benefit called "continuation of pay" for a period of 45 days from the date of the injury. The benefit is payable through the VA Medical Center as part of the Federal Employees Compensation Act, or FECA. The program only covers workplace injuries. When Wheeler met with Davis, Davis claimed she was working at 8:30 a.m. when the injury occurred. By filling out this form, Davis was stating she was injured while working.

When asked about the difference between workers' compensation and continuation of pay, Wheeler testified, "They're the same thing. Workers' compensation—continuation of pay is part of the workers' compensation program. But after the 45 days ends, they transfer to a compensation from Department of Labor directly."

On cross-examination, Wheeler elaborated as follows:

"Q. [I]nitially, if a person fills out the form that [Davis] filled out on September 3rd, they are entitled to 45 days of continuation of pay?

"A. Yes, sir.

"Q. And is that the—is that the correct terminology, continuation of pay?

"A. Yes, sir.

"Q. After the 45 days is up, do they then apply, if they want continuance—if they continue to be, I guess, off work, can they then apply for workers' compensation?

"A. Yes, sir.

"Q. But before you can apply for the workmen's compensation, you have to first do the 45 days of continuation of pay?

"A. They've already applied for workers' compensation benefits. On September 3rd when she filed the CA-1, that is workers' compensation benefits.

"Q. You're saying that workers' compensation benefits is the same as continuation of pay?

"A. No, sir. Workers' compensation benefits paid for her medicals or whatever from the day of injury. Continuation of pay is a program that's the first 45 calendar days after injury. If the disability continues past 45 days, they are provided the opportunity to claim compensation for lost wages after 45 days."

According to Wheeler, once the continuation of pay benefit expired after 45 days, an employee would "move into compensation from the Department of Labor." Wheeler testified that Davis applied for and received those additional benefits for "close to eight months," specifying that her injury was work-related and occurred during her shift.

Davis had an accident insurance policy with Colonial. It contained a base accident policy and two riders: a hospital confinement rider and a disability income rider, which is at issue here. The base accident policy covered accidents occurring on or off the job and would pay for doctor's visits and "any broken sprain/strain as outlined under the accident policy." The disability rider only covered accidents occurring off the job. The base policy and the disability rider defined "off-job injury" as an injury "which occurs while you are not working at any job for pay or benefits" and defined "on-job injury" as an injury

"which occurs while you are working at any job for pay or benefits."

Davis submitted three claim forms at issue here and introduced at trial as exhibits 3, 4, and 5. Exhibit 3 was a claim form under the base accident policy submitted on September 16, 2015. In the form, Davis was asked if the accident occurred "on-job" or "off-job," and she checked the box for "off-job."

Exhibit 4 was a claim form under the disability rider submitted on September 30, 2015. Davis was asked on the form, "Were you at work at the time of your accident or sickness?" She marked the box for "No." She was also asked, "Have you filed for workers' compensation benefits?" She marked the box for "No." This form also contained a section entitled "Employer statement," which listed Torah Phillips as the employer contact for "updates on return to work status." This section also contained a checked box indicating "No" for the question "Workers' compensation claim filed?," and a signature purportedly from Phillips.

Exhibit 5 was a claim form for continuing disability Davis submitted on November 5, 2015. In the claimant section of the form, she was again asked, "Were you at work at the time of your accident or sickness?" She again marked the space for "No." In the employer section, a similar question was asked, "Was employee at work when the accident or sickness occurred?" The space for "No" was marked. This employer section also contained Phillips' information and her purported signature.

A lead investigative consultant for Colonial testified that marking "Yes" to the workers' compensation question would not automatically disqualify Davis's claim. But it would prompt Colonial to seek more information because an insured cannot receive workers' compensation and be "off the job." The

consultant testified the policy did not define "workers' compensation." Further, leaving the employer portion of the forms blank would have raised "red flags" and prompted Colonial to reach out to the employer.

Torah Phillips testified that she was a Facility Revenue Manager at the VA Medical Center, and she never supervised Davis. While the two had a social relationship, Phillips did not sign the claim forms and never authorized anyone to sign on her behalf. Phillips contacted Davis when she learned about the disability claim form, and Davis told her she had signed Phillips's name.

Colonial paid Davis $2,700 in benefits on October 14, 2015 (effectively $2,678 after deducting $22 for overnight mail of the check).

About six months later in May 2016, Davis was interviewed by a detective for the California Department of Insurance, Fraud Division. Davis wrote a statement at her workstation, explaining that she was a single parent, was "trying to make ends meet," and made "some bad choice." She was "very very so for what I have done" (presumably "sorry") and was "willing to pay the company back monies" that she had received. She also wrote: "I thought when I got the insurance I was covered on and off job. The rep never stated that to me." She ended by stating, "I'm really sorry about what I have done," and she pleaded to keep her job.

Davis testified at trial, explaining that she was not scheduled to work on the day of the accident because she had planned to leave on vacation. But she changed her mind and went into the office. She entered the building and was injured

just before 8:30 a.m. As she was attempting to put her key into the door, her supervisor opened it at the same time, injuring her.

She believed she only began to work when she arrived at her desk, although she also believed she was still at work if she left her office for a break or to go to the copy machine. Her pay had been docked for being even a minute late to her desk in the morning, and she produced a May 2016 email from her supervisor stating she needed to be ready to work at 7:30 a.m., not coming in at that time.

She checked the boxes in her insurance claim forms indicating she was off work because she had not made it to her desk at the time she was injured. She denied receiving any workers' compensation benefits and checked the box that she had not filed for workers' compensation benefits because she thought continuation of pay was different. On the CA-1 form, she may not have read the portion indicating she was injured in the "performance of duty" and was on medication and "still in so much pain" at the time.

Regarding Phillips's signatures on the forms, Davis testified they were friends and co-workers, but she did not work for Phillips or in the same building. At the time of trial, they had not spoken for over a year. Davis had someone fill in the sections with Phillips's information because she believed Phillips could verify she was not at work, even though Phillips was not her direct supervisor. She had spoken to Phillips, who had given her permission to fill out the documents.

On the disability claim form, Davis had a friend complete and sign Phillips's section so the handwriting would not match her own. Davis did not list her current supervisor because they had "differences" and he was the one who had hit her with the

door. At the time she was submitting her claim, Davis sent a text message to Phillips asking if she had been contacted by anyone, meaning Colonial.

Regarding the statement given to the fraud investigator, Davis explained that she had apologized because she had been told she did something wrong. She did not believe she did anything wrong.

2. Procedural Background

Davis was charged with six counts: Count 1 for insurance fraud in violation of Penal Code section 550, subd. (b)(3);[1] counts 2, 3, and 4 for insurance fraud in violation of section 550, subd. (a)(1)); count 5 for forgery (§ 470, subd. (a); § 473, subd. (a)); and count 7 for grand theft (§ 487, subd. (a)). (There was no count 6 charged.)

At trial, the prosecutor clarified the alleged factual basis for each count:

- Count 1 (fraud): Davis's failure to disclose on the disability claim form in exhibit 4 that she had filed for workers' compensation benefits.
- Count 2 (fraud): Davis's false statement on the accident claim form in exhibit 3 that she sustained her injury off-job.
- Count 3 (fraud): Davis's false statements on the disability claim form in exhibit 4 regarding worker's compensation, sustaining her injury while not at work, and Davis's forging of Phillips's signature.
- Count 4 (fraud): Davis's false statement on the continuing disability claim form in exhibit 5 regarding sustaining her

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[1] All undesignated statutory citations are to the Penal Code.

injury while not at work and her forging of Phillips's signature.[2]

- Count 5 (forgery): Davis's forging of Phillips's signature on the disability and continuing disability claim forms in exhibits 4 and 5.
- Count 7 (grand theft): Colonial's payment to Davis of $2,700 in reliance on the false information she submitted.

The jury deadlocked on count 5 for forgery and the court eventually dismissed it. The jury found Davis guilty on the remaining five counts. The court sentenced her to three years of probation, including 180 days in county jail for count 1, stayed. It declined to impose any additional term for the other counts.

DISCUSSION

I. Sufficiency of the Evidence

Davis challenges the sufficiency of the evidence supporting all of the counts. Her arguments can be grouped into evidentiary challenges to the three factual representations the prosecution alleged were false: (1) her false statements that she had not filed for workers' compensation benefits; (2) her false statements that she sustained an off-job injury; and (3) her forgery of Phillips's

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[2] There is some confusion in the record as to the act or acts supporting count 4. When initially explaining the factual basis for this count to the court, the prosecutor pointed only to the act of forging of Phillips's signature. In closing argument, however, the prosecutor argued this count was based on Davis's false statements in the claimant and employer sections of the form that she was not at work when she was injured. The parties on appeal treat this count as based on those two separate false statements, so we will as well.

signature. We will approach our analysis in this structure, and we will relate our analysis to the counts as necessary.[3]

A. Standard of Review

In addressing the sufficiency of evidence, we review " ' "the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt." ' [Citation.] 'We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.' " (*People v. Jackson* (2016) 1 Cal.5th 269, 345.)

B. Insufficient Evidence Showed Davis's Response to the Workers' Compensation Question Was False

Count 1 was based solely on a violation of section 550, subdivision (b)(3) for Davis's false statement in the disability claim form that she had not filed for workers' compensation benefits. Section 550, subdivision (b)(3) makes it unlawful to "[c]onceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement

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[3] Davis also challenges the trial court's denial of her section 1118.1 motion during trial on the same grounds. We review the denial of a section 1118.1 motion using the same standard as reviewing for sufficiency of the evidence to sustain a conviction, so we do not separately address this argument. (*People v. Houston* (2013) 54 Cal.4th 1186, 1215.)

to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled."

Davis contends insufficient evidence showed that she falsely stated she had not filed for workers' compensation benefits because, as a matter of federal law, the continuation of pay benefit she applied for was legally distinct from workers' compensation and there was no evidence that the parties intended a different understanding of "workers' compensation" in the insurance policy. We agree.[4]

The FECA generally "provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States." (20 C.F.R. § 10.0; see 5 U.S.C. § 8102(a) ["The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty," with certain exceptions not at issue here].) It "provides for payment of several types of benefits, including compensation for wage loss, schedule awards, medical and related benefits, and vocational rehabilitation services for conditions resulting from injuries sustained in performance of duty while in service to the United States." (20 C.F.R. § 10.0(b).)

"Continuation of pay" is a benefit contained in the FECA: "The United States shall authorize the continuation of pay of an employee, as defined in section 8101(1) of this title (other than

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[4] Count 3 for violating section 550, subdivision (a)(1) and count 7 for grand theft were also based in part on the false statement regarding workers' compensation. As we will explain, however, counts 3 and 7 were supported by sufficient evidence of other false statements, so reversal of those counts is not required.

those referred to in clause (B) or (E)), who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title." (5 U.S.C. § 8118(a).) It is generally paid without a break in time and is limited to 45 days. (5 U.S.C. § 8118(b)(1)–(2).) If a claim is denied, "payments under this section shall, at the option of the employee, be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of section 5584 of title 5, United States Code." (5 U.S.C. § 8118 (d).)

Crucially here, the continuation of pay statute provides that this benefit "shall *not* be considered as compensation as defined by section 8101(12) of this title." (5 U.S.C. § 8118(e), italics added.) The referenced section defines the term "compensation" to include "the money allowance payable to an employee or his dependents and any other benefits paid for from the Employees' Compensation Fund, but this does not in any way reduce the amount of the monthly compensation payable for disability or death." (5 U.S.C. § 8101(12).)

Federal regulations likewise define "Benefits and Compensation" to include a host of payments like "payments for lost wages, loss of wage-earning capacity, and permanent physical impairment," but does *not* include "continuation of pay as provided by 5 U.S.C. 8118." (20 C.F.R. § 10.5(a).) Further, "[t]he employer, not [the Office of Workers' Compensation Programs], pays [continuation of pay]. Unlike wage loss benefits, [continuation of pay] is subject to taxes and all other payroll deductions that are made from regular income." (20 C.F.R. § 10.200(a).)

To receive continuation of pay, the injured employee must file form CA-1 within 30 days of the injury, which Davis did here. (20 C.F.R. § 10.210(a).) By contrast, an employee must use form CA-7 "to claim compensation for periods of disability not covered by [continuation of pay]" and "to claim compensation for additional periods of disability following the initial injury." (20 C.F.R. § 10.102(a) & (b).) Although Wheeler testified Davis received benefits for "close to eight months," no CA-7 form was introduced at trial.

One federal district court has examined these provisions and concluded that continuation of pay is distinct from workers' compensation benefits under the FECA. (*Hoopes v. United States* (E.D.N.C. 1994) 867 F.Supp. 349, 350–351 (*Hoopes*).) In *Hoopes*, the court rejected an argument that a federal employee's receipt of continuation of pay benefits was tantamount to a finding that she was acting within the course and scope of her employment when she was injured, which would mean that compensation under the FECA was her exclusive remedy. (*Ibid.*) The court reasoned that the continuation of pay statute "is an avenue for an immediate remedy in the event of a traumatic injury which may lead to compensation through FECA. It is not a determination of eligibility under workers' compensation." (*Id.* at p. 351.) "The statute contemplates the possibility of the employee being turned down for compensation by the Secretary of Labor. Therefore, the receipt of benefits under this section cannot involve the same scrutiny which is used in determining entitlement under workers' compensation. In fact, the statute specifically excludes continuation of pay from the definition of compensation. 5 U.S.C. § 8118(e)." (*Ibid.*; see also *Kopunek v. Commissioner* (1987) 54 T.C.M. (CCH) 239 [U.S. Tax Court opinion finding continuation of

pay benefits were not excluded from gross income as workers' compensation because they "are not payments made under a workman's compensation act or a statute in the nature of a workman's compensation act"].)

These authorities demonstrate that the continuation of pay benefit is legally distinct from workers' compensation benefits under the FECA, so Davis could not have falsely stated that she had not filed for workers' compensation benefits. To argue otherwise, respondent cites Wheeler's testimony that continuation of pay is a workers' compensation benefit. But as outlined in the fact section above, Wheeler's testimony was not entirely clear on this point. In any case, her subjective lay opinion that continuation of pay was the same as workers' compensation was not admissible to show the proper *legal* characterization of continuation of pay. (See *Pond v. Insurance Co. of North America* (1984) 151 Cal.App.3d 280, 289 [legal opinion from lay witness inadmissible].)

Respondent also notes that the continuation of pay regulations are contained within a chapter entitled "Office of Workers' Compensation Programs, Department of Labor" (see 20 C.F.R. § 10.200), and the CA-1 form listed "Office of Workers' Compensation Programs" at the top. But neither the chapter title nor the heading on the CA-1 form overrides the actual statutory and regulatory characterization of continuation of pay within the FECA.

Finally, respondent cites a series of federal cases, claiming they treat continuation of pay as workers' compensation. We have reviewed those cases, and, unlike *Hoopes*, none of them directly addressed the issue of whether continuation of pay is

considered workers' compensation. We find the discussion in *Hoopes* persuasive.[5]

Respondent offered no evidence at trial that Davis or Colonial understood the term "workers' compensation" to mean anything other than this legal definition. The *only* evidence as to the parties' understanding was Davis's testimony that she checked the box indicating she had not filed for workers' compensation benefits because she thought continuation of pay was different. Thus, insufficient evidence supported Davis's fraud conviction in count 1 for falsely claiming on the disability claim form that she had not filed for workers' compensation benefits.

C. Sufficient Evidence Showed Davis Falsely Claimed She Sustained an Off-Job Injury

Counts 2, 3, and 4 for fraud and count 7 for grand theft were based either solely or partially on Davis's statement in the three claim forms that she sustained her injury while off-job. Section 550, subdivision (a)(1) makes it unlawful to "[k]nowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or

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[5] Respondent contends Davis fell within the reasoning in *Hoopes* because Wheeler testified that Davis applied for workers' compensation benefits for "close to eight months." But Davis testified that an employee "move[s] into compensation from the Department of Labor" *after* the end of the 45-day period for continuation of pay. Davis filed the CA-1 form for continuation of pay on September 3, 2015 and completed the disability claim form on September 30, 2015, within the 45-day period for continuation of pay. There was no evidence that she had filed for any other type of benefit when she completed the disability claim form.

injury under a contract of insurance." A defendant violates this section by (1) knowingly presenting a false claim (2) with the intent to defraud. (*People Ex Rel. Government Employees Ins. Co. v. Cruz* (2016) 244 Cal.App.4th 1184, 1193 (*Cruz*).)[6]

Unlike the term "workers' compensation," the terms "on-job injury" and "off-job injury" were defined in Davis's insurance policy and disability rider: "off-job injury" was an injury "which occurs while you are not working at any job for pay or benefits"; and "on-job injury" was an injury "which occurs while you are working at any job for pay or benefits." We find sufficient evidence supported the jury's finding that her statements were false under the policy and made with the intent to defraud.

Davis's regular hours were 7:30 a.m. to 4:00 p.m., and she was injured at 8:30 a.m. while entering the interior door to her work area. While she was on a paid authorized absence from 7:30 a.m. to 8:30 a.m., she applied for continuation of pay with Wheeler, which only covered workplace injuries. She represented to Wheeler that she was working when she was injured at 8:30 a.m., and she signed the CA-1 form under the penalty of perjury, attesting that she was injured "in performance of duty as an employee of the United States Government." Wheeler testified that by filling out this form, Davis was stating she was injured while working. Although Davis testified that she may not have read this portion of the CA-1 form, the jury was free to disbelieve her. Wheeler also testified that Davis applied for and received additional benefits for "close to eight months," specifying that her injury was work-related and occurred during her shift. Davis's

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6 Davis treats the grand theft count as derivative of the fraud counts, so we do not separately address it.

written statement six months later apologizing for what she had done also demonstrated a consciousness of guilt.

Davis argues that the truth of her statement "can only be resolved by applying contract law" to interpret the insurance policy. She claims that the definition of off-job injury cannot be interpreted to include "arriving" at work rather than "working," and if the definition is ambiguous, it must be construed in her favor as the policy holder. (See *Gray v. Zurich Ins. Co.* (1966) 65 Cal.2d 263, 269, fn. 3.) Yet, whether she was merely "arriving" at work or "working" under the policy was a *factual* issue the jury resolved against her. Based on the time and place of her injury, her representation in the CA-1 form that she was injured in performance of her duties, and her letter showing consciousness of guilt, the jury could have reasonably inferred that (1) Davis understood the plain meaning of "on-job injury" and "off-job injury" as defined in the policy; (2) she was in fact working at the time was injured under the meaning of the insurance policy; and (3) she intended to misrepresent that she sustained an "off-job injury" in order to obtain benefits. Resolution of those issues did not require a legal interpretation of the meaning of the policy language.

With regard to the accident claim form specifically, Davis further argues that the jury could not find that she made a false claim because the accident policy covered both on-job *and* off-job injuries. She contends her statement was thus not "material" because she could have obtained benefits regardless of her response. However, a violation of section 550 " 'is complete when a false claim for payment of loss is presented to an insurance company or a false writing is prepared or presented with intent to use it in connection with such a claim whether or not anything

of value is taken or received.' " (*Cruz, supra,* 244 Cal.App.4th at p. 1193.) As the jury in this case was specifically instructed, "It is not necessary that anyone actually be defrauded or actually suffer a financial loss as a result of the defendant's acts." (CALCRIM No. 2000; see *Cruz, supra,* at pp. 1193–1194.)

Moreover, Davis's false statement in the accident claim form *was* material because it assisted in her claim for disability benefits under the disability rider, which covered only off-job injuries. She surely would have raised red flags if she had inconsistently claimed an "on-job injury" in the accident claim form but an "off-job injury" in the disability claim form. It could very well have resulted in Colonial denying both benefits. Thus, sufficient evidence demonstrated she falsely claimed an "off-job injury" in both forms with the intent to defraud Colonial.

D. We Need Not Address the Sufficiency of Evidence Showing Davis Falsified Phillips's Signature

Counts 3 and 4 for fraud and count 7 for grand theft were also based in part on Davis's forging of Phillips's signature on the disability claim form in exhibit 4 and the continuing disability claim form in exhibit 5. However, the jury deadlocked on count 5 for forgery, which was based solely on the forging of Phillips's signature on these forms. The court polled the jury to reveal it was deadlocked 11 to one for guilt on the forgery count, with the holdout juror dissenting on the elements that Davis did not have authority to sign, she knew she did not have authority, and she intended to defraud.

From this, we infer that the jury did *not* convict Davis on the fraud or theft counts based on the forging of Phillips's signature. Instead, the jury must have convicted her on those counts based on the false off-job statements, given the jury

convicted her on count 2, which was based *solely* on Davis's false statement in the accident claim form that she sustained an off-job injury. Davis's false responses to the off-job injury questions were not materially different in the three claim forms, so sufficient evidence sustained counts 3, 4, and 7, without regard to the evidence related to the forging of Phillips's signature.

II. Davis's Claim of Instructional Error is Forfeited and Her Counsel was Not Deficient

Davis contends the trial court erred in failing to sua sponte instruct the jury on the legal relationship between workers' compensation and continuation of pay in order to guide the jury's consideration of count 1. Because we have reversed count 1, this contention is moot.

Davis also contends the court erred in not instructing on the principles of contract interpretation to guide the jury in evaluating her false statement that she sustained an off-job injury. Defense counsel did not request this type of instruction in the trial court, and we find the contention forfeited.

" '[E]ven in the absence of a request, a trial court must instruct on general principles of law that are commonly or closely and openly connected to the facts before the court and that are necessary for the jury's understanding of the case. [Citations.]' [Citation.] However, 'the court is required to instruct sua sponte only on general principles which are necessary for the jury's understanding of the case. It need not instruct on specific points or special theories which might be applicable to a particular case, absent a request for such an instruction. [Citation.]' [Citations.] [¶] Generally, the burden of requesting supplemental or clarifying instructions falls on the defendant, and failure to

request such instructions waives the contention of error." (*People v. Ramsey* (2000) 79 Cal.App.4th 621, 630.)

The court properly instructed on the elements of insurance fraud in violation of section 550, subdivision (a)(1) and theft by false pretense. The court also gave a detailed mistake of fact instruction at defense counsel's request, which told the jury, "If you find that the defendant believed the following facts, and if you find that belief was reasonable, she did not have the specific intent or mental state required for the alleged crime." It listed facts relevant to each count, including that "the defendant's injury on August 31, 2015 occurred 'off-job' within the meaning of the Colonial insurance policy."[7]

As noted above, the terms "on-job injury" and "off-job injury" were defined in the insurance policy in plain terms, and the issue before the jury was factual, that is, whether or not she was injured while "working at any job for pay or benefits." The jury was given a mistake of fact instruction consistent with the defense theory of the case that Davis believed she was not working at the time of her injury. Any further instructions on the principles of contract interpretation would have only supplemented or clarified the instructions given, and the court had no duty to give them in the absence of a request.

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[7] For count 4, the court did not list this fact, which may have been the result of the prosecutor's inconsistent statements as to the grounds for this count (see *supra,* footnote 2). If this was error, it was harmless because the instruction clearly presented the basis for Davis's mistake of fact defense, and she does not argue otherwise.

To avoid forfeiture, Davis contends that her counsel was ineffective for failing to request instructions on contract interpretation. "To establish ineffective assistance of counsel, ' " 'a defendant must first show counsel's performance was "deficient" because his "representation fell below an objective standard of reasonableness . . . under prevailing professional norms." ' " ' [Citation.] ' "[T]here is a 'strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.' " ' [Citation.] 'In the usual case, where counsel's trial tactics or strategic reasons for challenged decisions do not appear on the record, we will not find ineffective assistance of counsel on appeal unless there could be no conceivable reason for counsel's acts or omissions.' " (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1051.)

The record contains no explanation for defense counsel's failure to request instructions on contract interpretation, and Davis has failed to show that there was no explanation. Again, the issue was factual, and counsel could have reasonably opted to focus his argument—and *did*, in fact, argue in closing—that Davis was not working at the time of her injury, or if she was, she believed she was not. Counsel could have reasonably believed giving instructions on contract interpretation might create confusion and detract from Davis's factual defense. Thus, we reject Davis's ineffective assistance claim.

DISPOSITION

The conviction on count 1 is reversed and the matter remanded for resentencing. In all other respects, the judgment is affirmed.

BIGELOW, P.J.

We concur:

GRIMES, J.

STRATTON, J.